

Amendment to Resolution No. 10 - 2005

**BY: Chairperson at the request
of the County Executive**

**Legislative Day No. 3
Date: February 7, 2005**

Amendment No. 1

(This amendment substitutes the Payment in Lieu of Taxes Agreement attached as Exhibit 1 to Resolution No. 10-2005 with a revised Payment in Lieu of Taxes Agreement. The Housing Commission is not required to pay County real property taxes during the term of the agreement. County real property taxes for a shared equity lot are not paid until the lot is transferred. At the time of transfer, the accumulated County real property taxes must be paid. The amount due is calculated by multiplying the percentage of the seller's ownership interest by the total accumulated County real property taxes.)

- 1 Remove Exhibit 1, which is attached to the Resolution as introduced, and insert the substitute
- 2 Exhibit 1 attached to this Amendment.

FORM OF AGREEMENT

Project: New Colony Village

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT (this "Agreement") is made as of this _____ day of _____, 2005, by and between **HOWARD COUNTY HOUSING COMMISSION**, a public housing authority of the State of Maryland (the "Commission") and **HOWARD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the "County").

RECITALS

A. The Commission intends to contract with Corridor I Limited Partnership (the "Partnership") to buy fifty (50) lots located in New Colony Village ("New Colony"), which real property is more particularly described as set forth in Exhibit A (the "Property"). The Commission proposes to acquire the Property to assist low and moderate income residents.

B. The Commission has applied to the Sandy Spring Bank (the "Lender") for a loan in the approximate amount of Two Million Five Hundred Sixty-Two Thousand Dollars (\$2,562,000) (the "Bank Loan") and to the Partnership for a take back mortgage in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) (the "Partnership Loan") to fund the costs of acquiring the Property. Pursuant to Subtitle 4 of Title 13 of the Howard County Code (the "Code") the Property will provide housing for low and moderate income persons.

C. The Commission has requested that the County enter into an agreement with the Commission, with respect to payments in lieu of County real property taxes pursuant to Section 7-505 of the Tax-Property Article of the Annotated Code of Maryland (the "Act"). The Act provides, among other things, that real property may be exempt from County property tax if:

- (1) the real property is owned or leased by a person engaged in constructing or operating housing structures or projects;
- (2) the structures and facilities of the real property are governmentally-controlled as to rents, charges, rates of return, and methods of operation so that the real property operates on a nonprofit basis; and
- (3) the owner and the governing body of the county where the real property is located agree that the owner shall pay a negotiated amount, if any, in lieu of the applicable county property tax.

D. In order to assist the Commission in providing housing for low and moderate income persons, the County agrees to accept payments in lieu of County real property taxes due on the Property, as provided in this Agreement.

E. The County Council of Howard County, Maryland has approved this Agreement by resolution, a copy of which is attached hereto as Exhibit "B".

NOW, THEREFORE, in consideration of the premises and the mutual promises contained

herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Commission and the County agree as follows:

1. Definitions. In this Agreement the term:

(a) "Department" means the Department of Housing and Community Development.

(b) "Eligible Person" means either a low or moderate income resident currently occupying a Lot on the Property or a family of low or moderate income who purchases a Lot with a vacant home on the Property from the Commission.

(c) "Gross Rental Income" means the total of all charges paid by all tenants of the Property, less the cost of all utilities paid by the Commission.

(d) "Initial Closing" means the date of the initial closing transferring some or all of the Lots comprising the Property from the Partnership to the Commission.

(e) "Lot(s)" means one or more of the 50 lots identified on Exhibit A.

2. Effective Date. This Agreement shall take effect on the date of the Initial Closing (the "Effective Date"); provided, however, that if the Initial Closing has not occurred by _____ 2005, this Agreement shall be null and void.

3. Term of Agreement. This Agreement shall be in effect beginning on the Effective Date and shall end on June 30, of the tax year which begins ten years after the Effective Date, unless terminated on an earlier date, as provided in this Agreement, ("Termination Date") at which time all County real property taxes, as well as all other taxes, charges and assessments, shall be due and payable in full as required by law.

4. Payment in Lieu of Taxes (PILOT) Payments.

(a) Exemption. Any Lot set forth in Exhibit A shall be exempt from County real property taxes in accordance with the Act and as provided in this Agreement.

(b) Lot Owned Solely by Commission. For each Lot in which the fee simple interest is owned solely by the Commission, the Commission shall make no annual payment of County real property taxes.

(c) Shared Equity Lot. For each Lot in which the fee simple interest is owned by the Commission and an Eligible Person, ("Shared Equity Lot") the annual amount of County real property taxes due, but not immediately payable, shall be an amount equal to the amount of County real property taxes which would be due if the Lot were owned by a private individual multiplied by the percentage of the interest the Eligible Person owns in the Shared Equity Lot ("Deferred County Taxes"). Payment of the Deferred County Taxes on a Shared Equity Lot is, however, deferred (without accrual of interest or penalties) until such time as: (i) a Shared Equity Lot is transferred, voluntarily or by operation of law or (ii) the Eligible Person acquires 100% of the interest. At the time of such transfer or acquisition, whether during the term of the Agreement or subsequent to the Termination Date, the accumulated Deferred County Taxes shall immediately become payable.

(d) Elimination of Lot from Property. Any Shared Equity Lot which is transferred, whether voluntarily or by operation of law to a person other than the Commission or acquired by the Eligible Person during the term of this Agreement, shall be eliminated from the Property subject to this Agreement, shall not be part of any deferral, and shall be subject to all County real property taxes.

5. Time and Place Payments Due. Payments of Deferred County Taxes shall be made at time of transfer described in Subsection 4 (c), and before any deed or other instrument effecting the transfer is recorded, to the Director of Finance, 3430 Courthouse Drive, Ellicott City, Maryland 21043. Payments of the assessments other than the County real property tax, such as the County fire tax, front-foot benefit assessment charge and *ad valorem* charge, shall be made at the time and in the manner provided by law.

6. Reports and Records.

(a) By no later than April 1 of each year, the Commission shall submit to the County, in a form acceptable to the County, a report of the Property's income and expenses for the preceding calendar year, including an itemized breakdown of Gross Rental Income.

(b) The Commission shall provide the Department with a certified statement of eligibility of each resident occupying the Property, the amount of payment required and the full amount due. Such report will be reviewed by the Director of the Department and forwarded to the Director of Finance.

(c) Each report shall include the amount of taxes which have been deferred.

(d) The Commission shall submit such other reports as the County may reasonably require in order to verify the Commission's compliance with this Agreement.

(e) The Commission shall permit the County or any of its authorized agents to inspect the records of the Property in order to verify the Commission's compliance with this Agreement.

7. Representations and Warranties.

(a) The Commission represents and warrants to the County that it is eligible in all respects to enter into this Agreement to make payments in lieu of taxes under the Act.

(b) The Commission covenants and agrees that it will do all things necessary to remain eligible to make payments in lieu of taxes in accordance with the Act.

IN WITNESS WHEREOF, the Commission and the County, by their duly authorized representatives have signed this Agreement as of the date first written above.

WITNESS/ATTEST:

**HOWARD COUNTY HOUSING
COMMISSION**

Leonard S. Vaughan, Secretary

By: _____
Kevin J. Kelehan, Chairman

ATTEST:

HOWARD COUNTY, MARYLAND

Raquel Sanudo
Chief Administrative Officer

By: _____(SEAL)
James N. Robey
County Executive

APPROVED for Form and Legal
Sufficiency: this _____ day
of _____, 2005.

APPROVED for Sufficiency of Funds:

Barbara M. Cook
County Solicitor

Sharon F. Greisz, Director
Department of Finance

Exhibit A: Property Description

Exhibit B: Council Resolution No. _____

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EXHIBIT A

Legal description of the 50 Lots to be Listed in Exhibit.

EXHIBIT B

Copy of Council Resolution Approving Form of Agreement